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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,200	06/26/2001	Eugene S. Smotkin	491712000100	9382

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/21/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/891,200	Applicant(s) SMOTKIN, EUGENE S.	
	Examiner Raymond Alejandro	Art Unit 1795	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 10/03/07 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

**RAYMOND ALEJANDRO
PRIMARY EXAMINER**

Raymond Alejandro
Primary Examiner
Art Unit: 1795

Continuation of 10. Other (including any explanation in support of the above items): See MPEP 1205.02. As applicant is well-aware, the summary of the claimed subject matter exceeds applicant's instant invention. For instance, applicant's Summary of Claimed Subject Matter discusses, inter-alia, a) "Nafion" and "ASR" in claim 75; b) "membrane electrode assemblies", c) "200-500 C", d) "reactions are catalyzed on each face of a generally two dimensional membrane"; e) "metal or alloys can serve as separators of the fuel and oxygen that are the reactants in fuel cell and they reversibly absorb hydrogen"; f) "ALLOY support"; g) "low temperature 80 C" and the like (See pages 3-6 of the Appeal Brief dated 10/03/07). None of the foregoing limitations are included or recited in independent claims 75 and 84.

Applicant is respectfully requisitioned to limit the Summary of Claimed Subject Matter to the limitations currently recited in at least independent claims 75 and 84. It is COMPLETELY unnecessary to describe the aforementioned UNCLAIMED limitations as part of the CLAIMED Subject Matter. In other words, if applicant is NOT CLAIMING any of the foregoing limitations then there is NO reason to discuss them or to give the impression that the present claims do intend to recite them.

Since section V is STRICTLY related to "SUMMARY of CLAIMED Subject Matter", applicant is kindly requested to show where the present claims or independent claims 75 and 84 do recite each and every limitation mentioned above. In other words, applicant's SUMMARY of CLAIMED Subject matter is not commensurate in scope with the present invention as instantly claimed.

This action constitutes a SECOND Notification of Non-Compliant Appeal Brief (another was issued on 08/10/07) in which the Examiner has identified the same deficiency, and a THIRD Notification of Non-Compliant Appeal Brief (in total, first one was issued on 06/28/07).

Applicant is kindly requested to carefully review MPEP 1205.02 to correct the deficiencies indicated/noted in the present Notification of Non-Compliant Appeal Brief and/or avoid further DELAYS due to formal matters of an appeal brief.